IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

FRIDAY, THE 19TH OCTOBER 2007 / 27TH ASWINA 1929

Crl.Rev.Pet.No. 3763 of 2007()

CRA.174/2004 of ADDL.SESSIONS COURT (ADHOC)-IV, TRIVANDRUM
CC.88/2003 of JUDL. MAGISTRATE OF FIRST CLASS COURT-I, NEDUMANGAD

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REVN. PETITIONER:

SULAIMAN, AGED 48 YEARS,
T/O. THAMPIKUNJU, NAJA MANSIL,
KOCHUKARIKKAKAM, THENNUR,
ANAD MURI, THENNUR VILLAGE.

BY ADV. SRI.T.A.UNNIKRISHNAN
SRI.K.SATHEESH KUMAR

RESPONDENTS:

STATE OF KERALA REP. BY
PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM

BY ADV. SRI. K.S. SIVAKUMAR, PUBLIC PROSECUTOR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 19/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR , J

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CRL. R.P. NO. 3763 OF 2007

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Dated this the 19th day of October, 2007.

ORDER

The petitioner, who is the landlord of PWs 1 to 4 and the husband of PW1 and who was the accused in C.C. No. 88/03 on the file of Judicial First Class Magistrate-I, Nedumangad registered for offences punishable under Sections 323, 452 and 354 of the Indian Penal Code, challenges the conviction entered and sentence passed by the courts below.

2. The case of the prosecution can be summarised as follows:

On 02.08.1998 at about 6.45 p.m. the accused trespassed into House No. PP VII/734 in Thennoor Village where PWs 1 to 4 were residing and assaulted PWs 1 to 4 by inflicting fist bows on various parts of their body with intention to outrage their modesty and thereby committed offences punishable under Sections 452, 354 and 323 IPC.

3. On the accused pleading not guilty before the trial court for the aforementioned offences, the prosecution was permitted to adduce evidence in support of its case. The prosecution examined 10 witnesses as PWs 1 to 10 and got marked 7 documents as Exts.P1 to P7.

4. After the close of the prosecution evidence, the accused was questioned under Section 313 (1)(b) Cr.P.C with regard to the incriminating circumstances appearing against him in the evidence for the prosecution. He denied those circumstances and maintained his innocence.

5. The accused examined a member of the Jama as DW1.

6. The learned Magistrate after trial, as per judgment dated 22.03.2004 found the revision petitioner guilty of offences punishable under Sections 452 and 323 IPC. For the conviction under Section 452 IPC, he was sentenced to simple imprisonment for two years and to pay a fine of Rs.5000/- and on default to pay the fine, to suffer simple imprisonment for three months. For the conviction under Section 323 IPC, he was sentenced to simple imprisonment for one year.

7. Aggrieved by the said conviction and sentence passed by the trial court, the revision petitioner preferred an appeal as Crl. Appeal No. 174/2004 before the Sessions Court, Thiruvananthapuram. As per judgment dated 09.07.2007, the Additional Sessions Judge, Adhoc IV, Thiruvananthapuram acquitted the revision petitioner of the offence punishable under Section 452 IPC, but confirmed the conviction under Section 323 IPC and reduced the imprisonment to simple

imprisonment for three months. It is aggrieved by the said verdict that the revision petitioner is preferred this revision. In the mean while he has been arrested on 17.10.2007 and was committed to custody in the Central Prison, Thiruvananthapuram.

8. Even though the learned counsel appearing for the revision petitioner assailed the conviction under Section 323 IPC on various grounds, in as much as the courts below have concurrently convicted him under Section 323 IPC after a careful evaluation of the oral and documentary evidence in the case, this Court sitting in revision will be loath to interfere with the said conviction which is accordingly confirmed.

9. What now survives for consideration is the question regarding the adequacy or otherwise of the sentence imposed on the revision petitioner. The facts of the case will show that PWs 1 to 4, who are the mother and three daughters and the husband of PW1, are the rental occupants of the building in question of which the revision petitioner is the landlord. The evidence of PW1 will show that there was a talk for vacating PWs1 to 4 from the building in question. The occurrence was the outcome of a refusal on the part of PWs 1 to 4 and the husband of PW1 to vacate from the tenanted premises. All of

them belong to the same Jama. Having regard to the facts and circumstances of the case, I do not think that the revision petitioner deserves penal servitude by way of incarceration for his conviction under Section 323 IPC. I am of the view that a proper direction for compensation and the imprisonment already undergone by him will meet the ends of justice. Accordingly, the sentence imposed on the revision petitioner is set aside and instead the imprisonment already undergone by him shall suffice. In addition to the above, he is directed to pay a sum of Rs.3000/- (Rupees three thousand only) by way of compensation under Section 357(3) Cr.P.C to PW1. If the compensation is not deposited before the court below within one month from today, he shall suffer simple imprisonment for two months by way of default sentence. The revision petitioner shall be released from prison forthwith unless his continued detention is found necessary in connection with any other case against him. His release shall be subject to his liability to pay compensation within the time allowed as hereinabove.

The Crl.R.P is disposed of as above.

V. RAMKUMAR, JUDGE.

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